

# HEALTH AND DISPOSITION OF THE BODY

Title 8

Official Commentaries

Decisions

remains to another, offsite location or to disturb remains in an unknown or abandoned cemetery in order to construct improvements on the property. A cemetery dedication may be removed in an action under section 711.010 or 711.036 of the Health and Safety Code or in an action to abate a cemetery as a nuisance under section 711.007. Op. Att'y.Gen.2000, No. JC-0235.

Reg., ch. 634, § 48, eff. Sept. 1, 1993

## Construction and Operation

erected, or maintained only in a burial park zoned for the interment of cremated remains. A structure as the columbarium, plot, or vault in the same burial park as the columbarium,

human remains shall dispose of the cremated

as directed by the funeral establishment that

erected by the person who contracted for the

tion (1) or (2), by permanent interment of the

remains, the crematory shall send a written notice to the funeral establishment or person who contracted for the interment of the remains will be interred under Subsection (c)(3) of this chapter or Chapter 712; or

moves the cremated remains not later than the

is taken by the crematory in accordance with

Sept. 1, 1993.

## Injunction

is located may, by order, abate the cemetery

of this chapter or Chapter 712; or

inhabitants of the surrounding section.

with a population of more than 25,000, if the cemetery is located in an area of the county

# DEATH AND DISPOSITION OF THE BODY

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§ 711.008

- (A) in or near the municipality in which the cemetery is located; or
- (B) in the area proscribed for the location of a cemetery by Section 711.008; or
- (6) the owner of a plot in the cemetery.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.

Amended by Acts 1993, 73rd Leg., ch. 634, § 6, eff. Sept. 1, 1993.

## Notes of Decisions

### 1. Nuisance

Property dedicated as a cemetery must be used as a cemetery unless and until the dedication is removed. A permit from the Texas Department of Health is required to remove remains from a cemetery to another, offsite location or to disturb

remains in an unknown or abandoned cemetery in order to construct improvements on the property. A cemetery dedication may be removed in an action under section 711.010 or 711.036 of the Health and Safety Code or in an action to abate a cemetery as a nuisance under section 711.007. Op. Att'y.Gen.2000, No. JC-0235.

## § 711.008. Location of Cemetery

(a) Except as provided by Subsections (b), (c), (f), and (k), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

- (1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;
- (2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;
- (3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;
- (4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or
- (5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

- (1) a cemetery heretofore established and operating; or
- (2) the establishment and use of a columbarium by an organized religious society or sect as part of or attached to the principal church building owned by the society or sect.

(c) Repealed by Acts 2001, 77th Leg., ch. 200, § 1.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 250,000 and less than 251,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.